

1  
2  
3 **UNITED STATES DISTRICT COURT**

4 **DISTRICT OF NEVADA**

5 Nicholas McDaniel

Case No.: 3:24-cv-00074-LRH-CLB

6 Petitioner

**Order**

7 v.

8 Timothy Garrett, *et al.*,

9 Respondents

10 *Pro se* Petitioner Nicholas McDaniel commenced this habeas action by filing a Petition for  
11 Writ of Habeas Corpus (ECF No. 1-1) under 28 U.S.C. § 2254. This habeas matter is before the  
12 Court for initial review under the Rules Governing Section 2254 Cases,<sup>1</sup> as well as consideration  
13 of Petitioner’s Motion for Appointment of Counsel (ECF No. 1-2).

14 Pursuant to Habeas Rule 4, the assigned judge must examine the habeas petition and order  
15 a response unless it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v.*  
16 *Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). This rule allows courts to screen and dismiss  
17 petitions that are patently frivolous, vague, conclusory, palpably incredible, false, or plagued by  
18 procedural defects. *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*,  
19 908 F.2d 490, 491 (9th Cir. 1990) (collecting cases).

20 Petitioner challenges a conviction and sentence imposed by the Third Judicial District  
21 Court for Lyon County. On April 29, 2020, the state court entered a judgment of conviction  
22

23 <sup>1</sup> All references to a “Habeas Rule” or the “Habeas Rules” in this order identify the Rules  
Governing Section 2254 Cases in the United States District Courts.

1 pursuant to a jury verdict for sexual assault with use of a deadly weapon, kidnapping in the first  
2 degree with use of a deadly weapon, false imprisonment with use of a deadly weapon, two counts  
3 of assault with a deadly weapon, and injury to property. The state court sentenced Petitioner to an  
4 aggregate term of 14 years to life in prison.

5 In July 2021, Petitioner filed a state habeas petition. The state court denied relief and the  
6 Nevada Court of Appeals affirmed the denial of relief on appeal. On February 13, 2024, Petitioner  
7 filed his federal habeas petition. ECF No. 1-1. Because Petitioner filed an incomplete IFP  
8 application, the Court instructed Petitioner to file a complete IFP application or pay the filing fee  
9 and he paid the filing fee. ECF Nos. 4, 5. Accordingly, the Court denies Petitioner's IFP  
10 application. ECF No. 1.

11 Turning to Petitioner's motion for appointment of counsel (ECF No. 1-2) to assist him in  
12 this habeas action, there is no constitutional right to appointed counsel in a federal habeas corpus  
13 proceeding. *See Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*,  
14 549 U.S. 327, 336-37 (2007)). However, an indigent petitioner may request appointed counsel to  
15 pursue that relief. *See* 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is generally  
16 discretionary. *Id.* (authorizing appointment of counsel "when the interests of justice so require").  
17 But counsel must be appointed if the complexities of the case are such that denial of counsel would  
18 amount to a denial of due process, and where the petitioner is so uneducated that he or she is  
19 incapable of fairly presenting his or her claims. *See La Mere v. Risley*, 827 F.2d 622, 626 (9th Cir.  
20 1987); *Brown v. United States*, 623 F.2d 54, 61 (9th Cir. 1980).

21 The Court finds that appointment of counsel in this case is in the interests of justice  
22 considering Petitioner's lengthy sentence structure, that the petition may raise relatively complex  
23 issues, and it is unclear whether he will be able to adequately articulate his claims in proper person

1 with the resources available to him. Therefore, Petitioner's motion for appointment of counsel is  
2 granted.

3 IT IS THEREFORE ORDERED:

4 1. Petitioner's Application to Proceed *in forma pauperis* (ECF No. 1) is denied.

5 2. Petitioner's Motion for Appointment of Counsel (ECF No. 1-2) is granted.

6 3. The Federal Public Defender is provisionally appointed as counsel and will have  
7 30 days to undertake direct representation of Petitioner or to indicate the office's inability to  
8 represent Petitioner in these proceedings. If the Federal Public Defender is unable to represent  
9 Petitioner, the Court will appoint alternate counsel. The counsel appointed will represent Petitioner  
10 in all federal proceedings related to this matter, including any appeals or certiorari proceedings,  
11 unless allowed to withdraw. A deadline for the filing of an amended petition and/or seeking other  
12 relief will be set after counsel has entered an appearance. The Court anticipates a deadline of  
13 approximately 60 days from entry of the formal order of appointment.

14 4. Any deadline established and/or any extension thereof will not signify any implied  
15 finding of a basis for tolling during the time period established. Petitioner at all times remains  
16 responsible for calculating the running of the federal limitation period and timely presenting  
17 claims. That is, by setting a deadline to amend the petition and/or by granting any extension  
18 thereof, the Court makes no finding or representation that the petition, any amendments thereto,  
19 and/or any claims contained therein are not subject to dismissal as untimely. *See Sossa v. Diaz*,  
20 729 F.3d 1225, 1235 (9th Cir. 2013).

21 5. The Clerk of the Court will file Petitioner's Petition for Writ of Habeas Corpus  
22 (ECF No. 1-1).

23 ///

